

In re: Layt
Serial No.: 10/663,928
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REMARKS

Clean and marked-up versions of a substitute specification are enclosed herewith in duplicate. The substitute specification amends the application to incorporate the information requested in the Office Action, to update the description of the variety, and to make other minor amendments/corrections to the application. It is requested that pages 1-22 of the originally filed specification be canceled and replaced by the substitute specification submitted herewith.

The issues raised in the outstanding Office Action are addressed individually below.

I. Priority Claim.

On page 2, the Examiner notes that a typographic error has been made in the paragraph claiming the benefit of Australian Breeders Right Application Serial No. 2002/342. The Applicant appreciates the Examiner's careful review of the application, and have amended the priority claim herein to correctly recite that the priority Australian application was filed on November 15, 2002, received by the Australian Plant Breeders Rights Office on November 26, 2002, and accepted on December 13, 2002.

II. Declaration.

The Office Action requests that a substitute declaration or oath be submitted to rectify alleged deficiencies in the original declaration, specifically, omission of the U.S. application serial number.

A substitute declaration was submitted on June 14, 2004 to correct the error in the priority claim noted above. The substitute declaration does not indicate the U.S. application serial number, but references the title, filing date, attorney docket number and inventor's name for this application. The substitute declaration was further accompanied by a transmittal letter indicating the application serial number of the application for which the declaration was submitted.

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Accordingly, the Applicant submits that the substitute declaration satisfies the requirements of 37 CFR § 1.63 (see, MPEP § 602, Point VI "Identification of Application").

III. Sequence Requirement.

The Office Action included a requirement that a Sequence Listing in compliance with 37 CFR § 1.821 through § 1.825 be submitted. The Office Action indicated that a Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence AND/Or Amino Acid Sequence Disclosures was attached thereto. The Applicant notes that the Notice to Comply was not attached to the Office Action and was not received by the Applicant. A Sequence Listing in compliance with 37 CFR § 1.821 through § 1.825 as requested in the Office Action was submitted on June 3, 2004.

IV. Objections to the Disclosure.

The disclosure has been objected to under 37 CFR §1.163(a) and 35 U.S.C. §112, first paragraph, for presenting less than a full, clear and complete botanical description of the plant and the characteristics that distinguish the plant from related known varieties. The particular concerns raised in the Office Action are addressed individually below.

A. Description of Leaf Veins and Leaf Margins.

The Office Action requests that a description of the leaf veins (obscure or prominent) and the leaf margins (smooth or serrated) be set forth in the specification. The Applicant has incorporated this information at page 5, lines 25-27 of the substitute specification.

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B. Seed.

The Office Action requests that a botanical description of the seed be set forth in the specification. Seed is only rarely produced by the claimed plant. A description of the seed has been imported into the substitute specification at page 6, line 11.

C. Ligules.

The Office Action has further requested that a description of the ligules be set forth in the specification. This information has been incorporated in the substitute specification at page 5, line 29.

D. Age of the Observed Plant.

The Office Action has requested that the age of the plant observed for the detailed botanical description be disclosed in the specification. As indicated at page 5, lines 10-11 of the substitute specification, the observed plant was 6-months old.

E. Amendment to the Claim.

As requested in the Office Action, the claim has been amended to recite a "*Stenotaphrum secundatum* plant named 'B12'."

F. Inflorescence.

The Office Action has requested that a description of the inflorescence length and color with reference to the employed RHS Colour Chart be incorporated into the specification. This information has been imported at page 5, lines 33-34 of the substitute specification.

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G. Glumes, Awns and Lemmas.

The office Action has requested that a description of the glumes, awns and lemmas be set forth in the specification. The claimed plant does not have awns. This information and a description of the glumes and lemmas is incorporated into the substitute specification at page 6, lines 2-5.

V. Claim Rejection.

Claim 1 is rejected under § 112, first and second paragraphs, as not being supported by a complete and clear botanical description for the reasons indicated above with respect to the objections to the disclosure.

As discussed above, the Applicant has amended the specification to provide a more complete botanical description of the plant. Accordingly, the Applicant submits that Claim 1 is fully supported by the disclosure and respectfully requests that the rejections under § 112, first and second paragraphs, be withdrawn.

VI. Conclusion.

The concerns of the Examiner having been addressed in full, the Applicant respectfully requests withdrawal of all outstanding rejections and the issuance of a Notice of Allowance forthwith. The Examiner is encouraged to address any questions regarding the foregoing to the undersigned attorney, who may be reached at (919) 854-1400.

Respectfully submitted,




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CERTIFICATE OF EXPRESS MAILING

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Date of Deposit: September 3, 2004

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.



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